

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 340 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DISTRICT PRIMARY EDUCATION COMMITTEE

Versus

JOGIDAN JIVABHAI GADHVI

Appearance:

MS SEJAL K MANDAVIA for Petitioners

MR MUKESH R SHAH for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 09/04/96

ORAL JUDGEMENT

1. This CRA is directed against the judgment and order of the Extra Asst.Judge, Junagadh whereby he has summarily dismissed the application being Civil Misc.Application No.129/95 which was tendered by the appellant for condonation of delay caused in filing Regular Civil Appeal before the District Judge against the judgment of the trial court dated 18.10.95 passed in

Regular Civil Suit No.846/84. In the application it was interalia contended that the judgment and decree was rendered by the trial court on 18.10.95 and from October 22, 1995 to October 31, 1995 there was Diwali vacation but the case papers were with the advocate of the appellant. Advocate thereafter addressed a letter to the appellant from Junagadh which was received by the appellant on 9.1.1995 and thereafter certified copy of the judgment and decree was applied for. Certified copy of the judgment and decree was given to the appellant on 15.12.1995 and thereafter papers were sent to the advocate appearing on behalf of the District Panchayat for filing appeal. In this view of factual situation it was urged that there was some delay of about 30 days in preferring appeal and that the appellant was not or could not be said to be negligent or inactive or callous in preferring appeal. Id.Extra Asst.Judge at Junagadh has however taken to strict view of the matter and has preferred to follow the judgment of the Full Bench of this court in the case of MUNICIPAL CORPORATION OF AHMEDABAD vs VOLTAS LTD reported in 1994(2) GLR 1325 which is now overruled by the Supreme Court. Even otherwise there was decision of the Supreme Court in the case of COLLECTOR, ANANTNAG vs MST.KATIJI reported in AIR 1987 SC 1353 and in view of the said decision the courts of law are required to take liberal view while deciding the question as to there was sufficient cause which prevented the party from filing or preferring proceeding within prescribed period of limitation. An attempt to making exception to said judgment by the Full Bench of this court is also overruled by the Supreme Court and in that view of the matter the judgment and order of the Extra Assistant Judge, Junagadh can not be permitted to stand and it is required to be quashed and set aside. In my opinion sufficient cause is made out by the appellant which prevented him from preferring appeal within time and therefore delay caused in filing appeal was required to be condoned and is hereby condoned. The Extra Asst.Judge at Junagadh is directed to register the appeal as Regular Civil Appeal and to decide the same on merits in accordance with law. Writ of this judgment to be sent down to lower appellate court within fortnight from today. Rule is made absolute accordingly. No costs.

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